

Amendment and Reply

Applicant: Jerry Rolia et al.

Serial No.: 10/698,769

Filed: October 31, 2003

Docket No.: 200300266-1

Title: METHOD AND SYSTEM FOR GOVERNING ACCESS TO COMPUTING UTILITIES

REMARKS

The following remarks are made in response to the Final Office Action mailed July 2, 2009. Claims 1-27 were rejected. With this Response, claims 1, 14 and 27 have been amended. Claims 1-27 remain pending in the application and are presented for reconsideration and allowance.

Claim Rejections under 35 U.S.C. § 112

The Examiner rejected claims 14-26 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

With this response, the language objected to is deleted from the claim. As such, claims 14-26 are believed to be in form for allowance. Therefore, Applicants respectfully request that rejections to these claims under 35 U.S.C. § 112, second paragraph, be reconsidered, and that the rejections be removed and these claims be allowed.

Claim Rejections under 35 U.S.C. § 102

The Examiner rejected claims 1 and 27 under 35 U.S.C. § 102(e) as being anticipated by the Clohessy et al. U.S. Patent No. 7,334,228. The Examiner also rejected claims 1-2, 5-6, 8-15, 18-19, and 21-27 under 35 U.S.C. § 102(e) as being anticipated by the Brelin U.S. Patent No. 6,647,448. Applicants respectfully disagree.

As amended, claim 1 is a method of governing access to resources in a computing utility facility. A processor is provided for receiving a demand profile associated with an application that identifies the resources required from a pool of resources in the computing utility facility during one or more demand cycles. An application is admitting to the computing utility facility if resources required for the application can be provided from the pool of resources in accordance with the demand profile and associated one or more demand cycles. Available resources are assigned from the pool of resources in response to a request from the applications admitted to the computing utility facility. Finally, the method includes *policing requests for resources from the admitted applications and intercepting applications if the resources being requested are outside an acceptable range*. This is not taught or suggested in the art of record.

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Neither the Brelin or Clohessy references teach or suggest the features of the claim. As Applicants have previously detailed in the Amendment and Response filed April 15, 2009, these references are not related to a computing facility utility as that phrase is defined in the claims and specification (See Response, page 9). As such, neither reference teaches or suggests policing requests for resources from the admitted applications and intercepting applications if the resources being requested are outside an acceptable range. This feature of the claim is useful in a computing facility utility, but has no applicability to the references relied upon. Accordingly, neither reference teaches or suggests it.

The Clohessy reference teaches a resource management within a personable portable device. If an application is going to run on the portable device, the resource management ensures there is adequate RAM allocated for the application (*see*, Office Action of July 2, 2009, page 3, citing Clohessy, column 6, lines 2-15). Once an application is running, there is no teaching or suggestion in Clohessy that the application is policed in order to intercept in an instance where an admitted application requests resources outside an acceptable range.

Similarly, the Brelin reference fails to teach this feature. The Brelin reference teaches managing access using a scheduling bulletin board (*see*, Abstract). At most, Brelin contemplates monitoring requests to determine their status in whether they are completed or not completed. (*see*, Office Action of July 2, 2009, page 6, citing Brelin, column 10, lines 5-10). It does not teach policing an admitted application in order to intercept in an instance where an admitted application requests resources outside an acceptable range.

Because neither of these references teaches this feature of the claim, amended claim 1 is allowable over the art of record, as are the claims that depend from it. Also, since amended claim 27 includes a similar feature, it too is in form for allowance.

In addition, as amended claim 14 is an apparatus for governing access to resources in a computing utility facility. It includes a processor capable of executing instructions and a memory containing instructions when executed cause the processor to receive a demand profile associated with an application that identifies the resources required from a pool of resources in the computing utility facility during one or more demand cycles, admit an application to the computing utility facility if resources required for the application can be provided from the pool of resources in accordance with the demand profile and associated one or more demand cycles; and assign available resources from the pool of resources in

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response to a request from the applications admitted to the computing utility facility. *The demand profile associated with an application is created through data collection or statistical estimation.* This is not taught or suggested in the art of record.

As explained throughout the specification, and in particular on page 13, paragraph [0035], the demand profile for a given application is created empirically through data collection of through various statistical estimation methodologies. For example, the demand profile for one application can include many smaller demand profiles corresponding to different time periods or other cycles of operation used by the application.

Because the present claim, unlike the Brelin and Clohessy references, is directed to a computing utility facility, it may have business applications running continuously, where there is one demand cycle associated with demand during the week and another demand cycle associated with demand by the application on weekends or other period. Creating the demand profile via data collection or statistical estimation accounts for this variability in demand cycles for a computing utility facility. This is not taught or suggested in the art of record as this variability on application demand cycle is not an issue raised or addressed by them.

Because neither of these references teaches this feature of the claim, amended claim 14 is allowable over the art of record, as are the claims that depend from it. Therefore, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 102 rejection to the claims, and request allowance of these claims.

Claim Rejections under 35 U.S.C. § 103

The Examiner rejected claims 3-4 and 16-17 under 35 U.S.C. § 103(a) as being unpatentable over the Brelin U.S. Patent No. 6,647,448 in view of the Funke et al. U.S. Patent No. 5,845,201. The Examiner also rejected claims 7 and 20 under 35 U.S.C. § 103(a) as being unpatentable over the Brelin U.S. Patent No. 6,647,448 in view of the Contestabile U.S. Patent No. 7,123,141.

Because each of these claims depend from claims 1 or 14, which are believed to be in condition for allowance as discussed above, they too are in condition for allowance. Therefore, Applicants respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection to the claims, and request allowance of these claims.

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CONCLUSION

In view of the above, Applicants respectfully submit that pending claims 1-27 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1-27 is respectfully requested.

No fees are required under 37 C.F.R. 1.16(h)(i). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 08-2025.

The Examiner is invited to contact the Applicants' representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to either Paul P. Kempf at Telephone No. (612) 767-2502, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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